



U.S. Department of Justice

Environment and Natural Resources Division

BSG:AML
DJ No. 90-11-3-1620/2

Environmental Enforcement Section
P.O. Box 7611 Telephone: (202) 514-4213
Washington, D.C. 20044-7611 Facsimile: (202) 616-6584

July 3, 2002

EPA Region 5 Records Ctr.



274484

VIA TELECOPY AND REGULAR MAIL

Jon Haden
Lathrop & Gage
2345 Grand Blvd.
Suite 2800
Kansas City, Missouri 64108
fax: 816 292-2001

Re: United States v. Aeronca, Inc. et al.
Civil Action No. 1:01 CV 00439
BFI Documents

Dear Jon:

As we discussed yesterday, I am trying to secure documents that Dick Clarke presumably turned over to BFI of Ohio in 1983 when Clarke sold the assets of his company (Clarke's Services) to BFI. For your information, I have enclosed a copy of the "Assignment and Bill of Sale" for that transaction. As you can see on Exhibit B of the document (page 10), Clarke (the "Seller") was required to "provide Buyer with all outstanding purchase orders, customer contracts and copies of ledger cards" upon signing the document. It is those documents that I am seeking. If BFI no longer has those documents, I am also asking BFI to review its files to determine if it has information about the customers that it secured from Clarke's Services in some form other than the form described in Exhibit B.

As I stated, I am sending this letter in lieu of a subpoena. Your client's continued cooperation is appreciated.

Sincerely,

Annette M. Lang
Trial Attorney

cc: Skinner Service List

ASSIGNMENT AND BILL OF SALE

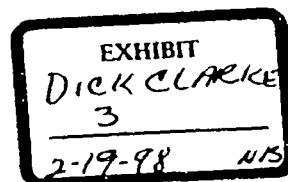
STATE OF OHIO

COUNTY OF HAMILTON

KNOW ALL MEN BY THESE PRESENTS:

THAT Clarke Services, Inc. (the "Seller"), a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 9740 Cincinnati-Dayton Road, West Chester, Ohio 45069, joined herein by Dick Clarke (hereinafter referred to as the "Stockholder") being the Sole Stockholder of Seller, for and in consideration of the sum of ONE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,300,000.00), paid in cash to Seller upon execution and delivery of this Assignment and Bill of Sale and other good and valuable considerations to Seller in hand paid by Browning-Ferris Industries of Ohio, Inc., a Delaware corporation (the "Buyer"), the receipt and sufficiency of which is hereby expressly acknowledged and confessed, has bargained and sold, and by these presents does GRANT, SELL, ASSIGN, TRANSFER and CONVEY unto Buyer, its successors and assigns, the following personal property (whether affixed or attached to real property or not) and contractual rights previously and presently being employed in the conduct of Seller's solid waste collection and disposal business in and around West Chester, Ohio including:

- A. Those certain motor vehicles and materials handling equipment owned by Seller and heretofore employed by Seller in the conduct of Seller's business in and around West Chester, Ohio all as more particularly described and set forth on Exhibit "A", attached hereto and incorporated herein by reference;
- B. Telephone number (513)779-2000, which Seller represents to have been listed in its name and exclusively used by Seller in the conduct of its solid waste collection and disposal business, Buyer to assume and be obligated to pay for all charges for the use of said number after notice



of the assignment of said number to Buyer has been given to and accepted in writing by the telephone company, and said number has been effectively transferred into the name and exclusive use of Buyer; and said number shall be transferred back to Seller and/or Stockholder, when Buyer ceases to use said telephone number, but no later than one (1) year from the date hereof.

- C. Contractual rights and powers of Seller with third parties relating to the conduct of Seller's solid waste collection and disposal business in and around West Chester, Ohio, including, but not limited to, contracts, leases or permits (copies of which are to be attached to this Assignment and Bill of Sale) in effect between Seller and third parties used in connection with the solid waste collection and disposal services of Seller, all as more particularly described and set forth on Exhibit "8", attached hereto and incorporated herein by this reference;
- D. The purchase price shall be allocated to each asset being sold hereunder as specified in Exhibit "C" attached hereto and incorporated herein by reference. The parties recognize and agree that such allocations are to be used by the parties for federal income tax purposes.

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns forever.

I

For the express purpose and with the intent of inducing Buyer to purchase the property set forth and described in this instrument and exhibits attached hereto, knowing full well that Buyer will rely upon the same and pay a good and valuable consideration therefor, Seller and Stockholder hereby make the following warranties, covenants, representations and indemnifications (all of which warranties, covenants, representations and indemnifications are joint and several) to Buyer, all of which are intended to survive any examinations or inquiries by Buyer and the sale and delivery of the property and the payment of the consideration therefor for a period of three (3) years from the date of this Assignment and Bill of Sale:

- A. There is no legal impairment which would prevent Seller from selling, conveying, assigning, and transferring the property provided for herein to Buyer; and Seller is not engaged in and, to the best of its knowledge and belief, is not threatened with any litigation or governmental or other proceeding which may give rise to any claim against the property hereby sold;

- B. Seller has good and marketable title to all of the property hereby sold, subject to no existing mortgage, pledge, lien, security, interest, conditional sale, or other title retention agreement, lease, encumbrance, restriction, due and unpaid taxes, or charge whatsoever;
- C. Seller has complied with all applicable federal and state laws relating to the employment of labor, including the provisions thereof relating to wages, hours, collective bargaining, pension plans and the payment of social security and similar taxes, and is not liable for any arrearages of wages or any tax or penalty for failure to comply with any of the foregoing; there are no material controversies pending or to the best of Seller's and Stockholder's knowledge and belief, threatened between Seller and its employees or other parties which may affect the property hereby sold; Seller is not a party to any collective bargaining agreement, employment contract or severance pay obligation, and is not obligated under any law to recognize or negotiate with any collective bargaining representative or their employees;
- D. No consent or approval of or notice to or other action by any governmental body or agency or any other person or party is required in connection with the execution of this Assignment and Bill of Sale; no governmental franchises, license, consent or permits are required in connection with the property transferred hereby to Buyer, except such as may be required by health, safety, fire, revenue, or building acts or ordinances;
- E. Seller and Stockholder covenant and agree that they will warrant and defend the title to the property hereby sold to Buyer, its successors and assigns, against the lawful claims, demands and charges of all persons whomsoever; Seller and Stockholder hereby additionally promise and agree to defend, indemnify and save Buyer harmless from any and all losses and expenses which Buyer sustains as a consequence of being asked to make good upon, or having to defend against a claim or demand, whether valid or not, which asserts any alleged violations of those laws, commonly referred to as "bulk sales laws" or relates to or arising from a responsibility, indebtedness, obligation or commitment of Seller, or arising out of the breach of any warranty or covenant made by Seller and Stockholder in this instrument, or because of any misrepresentation, whether intentional or otherwise, made by them in this instrument;
- F. Seller agrees to execute and deliver to Buyer, from time to time, such further and particular assignments, consents, or other instruments in writing as Buyer may request as appropriate or desirable to confirm its title in and to any and all of the property hereby sold, conveyed and assigned to Buyer;
- G. Seller agrees to pay all taxes, including any applicable sales or use tax (regardless of whether or not such taxes are actually levied or assessed against the Buyer) or any other charges whatsoever which may be imposed upon or assessed against the sale or transfer of the property thereby sold and conveyed to Buyer, except Buyer shall pay any and all sales and transfer taxes relating to the registration of any vehicles or equipment to Buyer's name.

- H. The Board of Directors of the Seller and the Stockholder have approved and authorized the execution, delivery and performance of this Assignment and Bill of Sale by Seller; and
- I. Seller and Stockholder shall indemnify and hold Buyer harmless from and against any and all claims, demands, suits, damages, obligations, liabilities, or expenses in respect of or arising out of the property hereby sold insofar as such negligence, obligation or liability shall be in respect of any period of time prior to Buyer taking actual physical possession of said property.
- J. Buyer shall indemnify and hold Seller and Stockholder harmless from and against any and all claims, demands, suits, damages, obligations, liabilities, or expenses in respect of or arising out of the property hereby sold insofar as such negligence, obligation or liability shall be in respect of any period of time after Buyer's taking actual physical possession of said property.

II

Nothing in this Assignment and Bill of Sale shall in any way obligate Buyer for any liabilities or obligations of Seller except for those specifically scheduled and attached hereto and specifically agreed to be assumed by Buyer.

III

In the event Buyer does not close according to a Contract to Purchase between Seller and Buyer dated March / , 1984, for any reason due to the fault of Buyer, then, in such case, such failure to close shall be deemed a breach of this Assignment and Bill of Sale by Buyer. In such event, Buyer shall immediately return to Seller all the assets set forth on Exhibit "A", in the same condition as of the date of this Assignment and Bill of Sale, or at the option of Buyer, shall pay to Seller the then current replacement cost of any asset set forth on Exhibit "A" not returned to Seller. In addition, Seller shall retain the One Million Three Hundred Thousand (\$1,300,000.00) Dollars paid by Buyer to Seller under this Assignment and Bill of Sale as liquidated damages for the breach of this Assignment and Bill of Sale.

IN WITNESS WHEREOF, Seller and Stockholder have hereunto affixed their hands

and seals this 1st day of March, 1984.

BUYER:

By Jim Cosman
Vice President

ATTEST:

[Signature]

WITNESS:

Tim Lobstein

Alan T. Mauer

SELLER:

By Dick Clarke, Pres

ATTEST:

[Signature]

STOCKHOLDER:

Dick Clarke, Pres

THE STATE OF OHIO

COUNTY OF HAMILTON

BEFORE ME, the undersigned authority, on this day personally appeared Dick Clarke, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 1st day of March, 1984.

Dennis L. Manes
Notary Public in and for
Hamilton County, Ohio

THE STATE OF OHIO

COUNTY OF HAMILTON

DENNIS L. MANES, Notary Public
Notary Public in and for
Hamilton County, Ohio
My Comm. Expires 12/31/85
Date of Appointment 12/31/83

BEFORE ME, the undersigned authority, on this day personally appeared Dick Clarke, known to me to be the person whose name is subscribed to the foregoing instrument as President of Clarke Services, Inc., a corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 1st day of March, 1984.

Dennis L. Manes
Notary Public in and for
Hamilton County

THE STATE OF OHIO

COUNTY OF HAMILTON

DENNIS L. MANES, Notary Public
Notary Public in and for
Hamilton County, Ohio
My Comm. Expires 12/31/85
Date of Appointment 12/31/83

BEFORE ME, the undersigned authority, on this day personally appeared Jim Cosmon, known to me to be the person whose name is subscribed to the foregoing instrument as Vice President of Browning-Ferris Industries of Ohio, Inc., a corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 1st day of March, 1984.

Dennis L. Manes
Notary Public in and for
Hamilton County

DENNIS L. MANES, Notary Public
Notary Public in and for
Hamilton County, Ohio
My Comm. Expires 12/31/85
Date of Appointment 12/31/83

EXHIBIT "A-1"

DINOSAURS

<u>Truck #</u>	<u>Year</u>	<u>Make</u>	<u>Serial #</u>
10	1974	Kenworth	300734
12	1980	Mack Dino	DM 685 E 47135
13	1977	CCC	2430
14	1973	Mack - or proceeds if sold	DM 685 S 15915
15	1973	Mack - or proceeds if sold	DM 685 S 13931
16	1980	Mack	DM 611 S 6880
17	1975	Kenworth	300665
19	1980	Mack (not licensed)	DM 685 S 44663

FRONT LOADERS

30	1971	International	49924	31 yard
31	1973	Kenworth	300238	31 yard
32	1975	Peterbuilt	75006 M	44 yard
33	1977	CCC	23268	34 yard
34	1977	CCC	24031	41 yard
35	1978	Mack	MB 685 S 6279	44 yard
36	1980	Mack plus insurance proceeds	MB 685 S 1854	44 yard
37	1980	Mack (not licensed)	MR 685 S 3109	41 yard
	1984	White (not in service)	1WXDCHJD2EN063051	

PICK-UPS & SMALL SERVICE TRUCKS

1	1974	GMC Pick-up	TCY 243 F 700122
2	1973	Chevrolet Tool Body	CE 330 F 171103
9	1975	Chevrolet Tire Truck	CCQ 145F331230

DUMP TRUCKS

1973	Ford	F50CCQ80953 T47
1968	International E & E	416 070H 786 336
1968	International - yellow	416 060H 774 546
1965	GMC	LV 400 9G 5036E

REAR LOADERS

1976	International	D10445FCA 22136
1974	International	227950CA20838
1965	Chevrolet	TE638P 102172
1965	Ford parts	C7 KU 708 870

By signing this Exhibit, Buyer accepts all of the above listed items in an "as is condition" and Buyer hereby waives any and all claims concerning the condition of said items.

SIGNED FOR IDENTIFICATION:

Jim Lesman

Robert N. [Signature]

Dick Clark

EXHIBIT "A-2"

TRAILERS

<u>Year</u>	<u>Make</u>	<u>Serial #</u>
1964	Monon Flat	1163
1964	Davis Dump	TJD 226414

TRACTORS

1973	Mack parts	R685 ST 36350
1973	Mack (Red)	R685 ST 36392
1966	Mack	MB 605 T 1443
1959	White	9000 TD 499 302

MISC

1973	International (gas)	156820G328464
1962	Ford (old) parts	T8 5HU 280 617
1965	Mack (77 kit)	861SX52982
1971	GMC (parts)	WM 132 189 598
1974	Peterbilt (parts)	61554 M
1971	GMC (parts)	WW 70AZ128179

By signing this Exhibit, Buyer accepts all of the above listed items in an "as is condition" and Buyer hereby waives any and all claims concerning the condition of said items.

SIGNED FOR IDENTIFICATION

Jim Cosman
A-Dick Clark

SCHEDULE OF EQUIPMENT

EXHIBIT "A-3"

DESCRIPTION

2 yds - 310

3 yds - 132

4 yds - 214

6 yds. - 429

8 yds - 177

39 various size compactor boxes

78 various size open top containers

11 - stationary packers

By signing this Exhibit, Buyer
accepts all of the above listed
items in an "as is condition" and
Buyer hereby waives any and all
claims concerning the condition
of said items.

SIGNED FOR IDENTIFICATION:

Jim Esman
Wick Elude

SCHEDULE OF CONTRACTUAL RIGHTS AND POWERS

EXHIBIT "B"

DESCRIPTION - LEASES

None

DESCRIPTION - PERMITS

None

DESCRIPTION - CONTRACTUAL RIGHTS AND POWERS INCLUDING CONTRACTS (ORAL OR WRITTEN) WITH CUSTOMERS

Seller shall provide Buyer with all outstanding purchase orders, customer contracts and copies of ledger cards on the signing of this Assignment and Bill of Sale

SIGNED FOR IDENTIFICATION:

Jim Gosman
Dick Clarke

SCHEDULE OF EQUIPMENT

EXHIBIT "C"

To Assignment and Bill of Sale from Clarke Services, Inc. to Browning-Ferris Industries of Ohio, Inc.

<u>DESCRIPTION</u>	<u>TOTAL PRICE</u>
Equipment set forth on Exhibit "A"	\$575,000.00
Customer List	\$725,000.00

Total Schedule \$1,300,000.00

SIGNED FOR IDENTIFICATION:

Jim Rosman
Clark Clarke